

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 06-196

Filed: January 26, 2007

JOHN DOE,*

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MEMORANDUM OPINION AND FINAL ORDER

I. RELEVANT FACTS AND PROCEDURAL HISTORY.

On March 13, 2006, Plaintiff filed a “First Petition Of The Plaintiff For His Own Release From False I[m]prisonment” in the United States Court of Federal Claims alleging violations of: 28 U.S.C. § 1331; 28 U.S.C. § 1983; 28 U.S.C. §§ 1346, 2671, 2680; and 28 U.S.C. §§ 1495, 2513 (hereinafter referred to as the “Complaint”).¹ See Complaint at 1. Attached thereto was a copy of an April 25, 2005 Complaint filed in the United States District Court for the Eastern District of North Carolina, against Inspector Generals in six executive branch departments and the Inspector General of the United States Postal Service, alleging a failure to inspect the “Federal Corrections Complex” in Butner, North Carolina, where Plaintiff presently is confined, and other alleged failures of service. In addition, Plaintiff attached an October 25, 2005 Motion for “Inspection of the Department of Justice Bureau of Prisons Annual Inspection for Fiscal Year 2006,” filed in the United States District Court for the Eastern District of North Carolina. Also attached to the March 13, 2006 Complaint were: two June 18, 2004 Memoranda to the “Senate Judicial Committee,” seeking a

* Because this case arises from Plaintiff’s confinement in the Federal Medical Center in Butner, North Carolina, on January 19, 2007, the court issued an Order placing the record under seal and changing the case caption to *John Doe v. United States* in Case No. 06-196.

¹ It appears that on February 1, 2006, Plaintiff filed a Notice of Legal Proceedings with the Clerk of the United States Court of Federal Claims that was returned to Plaintiff on February 14, 2006. See Complaint at 1.

“Congressional Inquiry Into Warehousing of Citizens at Department of Justice, Bureau of Prisons Throughout the United States;” and April 25, 2005 and July 29, 2005 requests to the Administrator of the Social Security Administration for an Amended Inspection. On March 13, 2006, Plaintiff also filed under Case No. 06-196, a Declaration In Support of Request to Proceed by a Petition for Writ of Habeas Corpus by a person in Federal Custody, pursuant to 28 U.S.C. § 2241, representing that Plaintiff had assets of \$31,985.64. The Declaration was signed by “J.A. Commander, Janitor.”

On April 19, 2006, Plaintiff filed a Statement of “False Imprisonment and Warehousing and The Denial of Medical Treatment,” requesting the appointment of a Master from the administrative law judges of the Social Security Office in Durham, North Carolina “to appear and hold proceedings in the federal Court Raleigh.” The court was uncertain about the Statement’s request, but it appears to seek consolidation of Case No. 06-196 in the United States Court of Federal Claims with Case 06-CT-3036 in the United States District Court for the Eastern District of North Carolina in Raleigh. It also appears that Plaintiff is under the misimpression that the Government’s counsel, Ms. Nancy Kim, has been assigned to represent Plaintiff.

On May 2, 2006, Plaintiff filed a “Procedure in Congressional Reference Cases,” clarifying that in this action, Case No. 06-196C, Plaintiff seeks an adjudication of claims for “false imprisonment, warehousing and denial of medical treatment[.]” A second “Petition,” however, also was referenced for “false imprisonment, warehousing, and denial of medical treatment for detainees and inmates,” that may have been filed in the United States District Courts of North Carolina or California. In addition, a third “Petition” was referenced for “false imprisonment, for detainees and inmates throughout the Bureau of Prison System in the United States.” Again, Plaintiff’s May 2, 2006 filing also reflected a misunderstanding that some, if not all, of these proceedings were pending before a “Claims Court Appointed Master and Judges With Masters All from Secretary Health and Human Services Administrative Law Judges.”

On May 18, 2006, Plaintiff filed two volumes of Appendices, including Exhibits A, A.2, B-F, F.1, G-H, I, I.1, J, J.1, K, L, L.1, M-P, Q, Q.1, Q.2, Q.3, Q.4 in support of the March 13, 2006 Complaint. On June 1, 2006, the Government filed a Motion for Summary Dismissal of the Complaint in the United States Court of Federal Claims Case No. 06-196C.

On June 2, 2006, Plaintiff filed two “Disclaimers.” One was styled as a Complaint against the Attorney General of the State of California and District Attorney in Riverside, California alleging violations of 28 U.S.C. § 1331, 42 U.S.C. § 1983, and violations of the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680. The other was styled as a Complaint against the District Clerk of the United States District Court in Los Angeles, the Clerk of the Superior Court for Riverside, California, and the Clerk of the Municipal Court for Riverside, California alleging violations of: 28 U.S.C. § 1331; 42 U.S.C. § 1983; and 28 U.S.C. §§ 1346, 2671-2680.

On August 31, 2006, Plaintiff filed a Modification of Surety Bond to pay “all cases of plaintiff,” with an Application to proceed *In Forma Pauperis*.

II. DISCUSSION

A. Jurisdiction.

The Tucker Act is the principal statute establishing the jurisdiction of the United States Court of Federal Claims. *See* 28 U.S.C. §1491. Under the Tucker Act, the court has “jurisdiction to render judgment upon any claims against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1).

The Tucker Act, however, is “only a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages.” *United States v. Testan*, 424 U.S. 392, 398 (1976). Therefore, in order to pursue a substantive right, a *plaintiff must identify and plead* a separate contractual relationship, constitutional provision, federal statute, and/or agency regulation that provides a substantive right to money damages for the court to have jurisdiction. *See Todd v. United States*, 386 F.3d 1091, 1094 (Fed. Cir. 2004) (“[J]urisdiction under the Tucker Act requires the *litigant to identify a substantive right for money damages against the United States* separate from the Tucker Act.”) (emphasis added); *see also Roth v. United States*, 378 F.3d 1371, 1384 (Fed. Cir. 2004) (“Because the Tucker Act itself does not provide a substantive cause of action, however, a plaintiff must find elsewhere a money-mandating source upon which to base a suit.”); *Kahn v. United States*, 201 F.3d 1375, 1378 (Fed. Cir. 2000) (“[T]he plaintiff ‘must assert a claim under a separate money-mandating constitutional provision, statute, or regulation, the violation of which supports a claim for damages against the United States.’” (quoting *James v. Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998))).

In this case, the Complaint did not identify or plead a separate source of substantive law upon which the claim relies that “can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.” *United States v. Mitchell*, 463 U.S. 206, 216 (1983); *see also Testan*, 424 U.S. at 400.

B. Standard For Decision On Motion To Dismiss Pursuant To RCFC 12(b)(1).

A challenge to the “court’s general power to adjudicate in specific areas of substantive law . . . is properly raised by a [Rule] 12(b)(1) motion.” *Palmer v. United States*, 168 F.3d 1310, 1313 (Fed. Cir. 1999); *see also Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (“If the court’s conclusion is that the source as alleged and pleaded is not money-mandating, the court shall so declare, and shall dismiss the cause for lack of jurisdiction, a Rule 12(b)(1) dismissal – the absence of a money-mandating source being fatal to the court’s jurisdiction under the Tucker Act.”); RCFC 12(b)(1).

In deciding a motion to dismiss, the court is “obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff’s favor.” *Henke v. United States*, 60 F.3d

795, 797 (Fed. Cir. 1995). Nevertheless, Plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) (“[O]nce the [trial] court’s subject matter jurisdiction [is] put in question, it [is] incumbent upon [plaintiff] to come forward with evidence establishing the court’s jurisdiction.”).

C. Pro Se Plaintiff Pleading Requirements.

In the United States Court of Federal Claims, the pleadings of a *pro se* plaintiff are held to a less stringent standard than those of the litigants represented by counsel. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (quoting *Haines v. Kerner*, 404 U.S. 519-520 (1972)) (*pro se* complaints, “however inartfully pleaded,” are held to “less stringent standards than formal pleadings drafted by lawyers”). Indeed, it has been the tradition of the court to examine the record “to see if [a *pro se*] plaintiff has a cause of action somewhere displayed.” *Ruderer v. United States*, 188 Ct. Cl. 456, 468 (1969).

D. The Court’s Resolution Of The Government’s Motion To Dismiss.

The Complaint in this case states claims under: (1) 28 U.S.C. § 1331; (2) 28 U.S.C. §§ 1346, 2671, 2680; (3) 28 U.S.C. §§ 1495, 2513; and (4) 42 U.S.C. § 1983. Plaintiff may not appreciate that the United States Court of Federal Claims is an Article I court with limited jurisdiction.

1. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Federal Question Claims Arising Under 28 U.S.C. § 1331.

Section 1331 states “*district courts* shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331 (emphasis added). Therefore, the United States Court of Federal Claims does not have jurisdiction to adjudicate allegations arising from the Due Process Clause or Equal Protection Clause of the United States Constitution, since Congress did not provide a money-mandating remedy therein. *See Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997) (holding that “the Court of Federal Claims correctly concluded that it does not have jurisdiction to hear [Plaintiff’s] due process or seizure claims under the Fifth Amendment to the United States Constitution”); *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (United States Court of Federal Claims did not have jurisdiction over a due process violation under the Fifth and Fourteenth Amendments because “they do not mandate payment of money by the government”). Accordingly, this claim must be dismissed.

2. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Federal Tort Claims Act Claims Arising Under 28 U.S.C. §§ 1346, 2671, 2680.

The Federal Tort Claims Act provides United States District Courts with exclusive jurisdiction over civil actions sounding in tort against the United States. *See* 28 U.S.C. § 1346(b)(1) (providing that “the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States for money damages . . . for injury or loss of property, or personal injury or

death caused by the negligent or wrongful act or omission of any employee of the Government”). Section 1346(b)(1) does not authorize the United States Court of Federal Claims to adjudicate civil tort actions. *See Awad v. United States*, 301 F.3d 1367, 1372 (Fed. Cir. 2002) (providing that jurisdiction for claims brought under the Federal Tort Claims Act lies in United States District Courts, not in the United States Court of Federal Claims).² Accordingly, this claim must be dismissed.

3. The United States Court Of Federal Claims Does Not Have Jurisdiction to Render Judgment On Claims For Unjust Conviction And Imprisonment Claims Arising Under 28 U.S.C. §§ 1495, 2513 In This Case.

Section 1495 provides this court with jurisdiction over claims for compensation stemming from unjust conviction and imprisonment. 28 U.S.C. § 1495 (“The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.”). However, section 1495 does not stand in isolation, and must be read in conjunction with 28 U.S.C. § 2513. *See Lott v. United States*, 11 Cl. Ct. 852, 852-53 (1987) (“The quoted statute [28 U.S.C. § 1495] must be read in conjunction with 28 U.S.C. § 2513[.]”); *Grayson v. United States*, 141 Ct.Cl. 866, 869 (1958). Section 2513 provides that in order for the United States Court of Federal Claims to render a judgment for money damages on claims for unjust conviction and imprisonment, the Plaintiff must have been adjudicated to be not guilty of a crime, for which Plaintiff was convicted and confined. *See* 28 U.S.C. § 2513(a) (“Any person suing under section 1495 of this title must allege and prove that: (1) His conviction has been reversed or set aside on the ground that he was not found guilty of the offense of which he was convicted[.]”); 28 U.S.C. § 1495; *see also Lott v. United States*, 11 Cl. Ct. 852 (1987); *Vincen v. United States*, 468 F.2d 930 (Ct. Cl. 1972); *Ekberg v. United States*, 76 F. Supp. 99 (Ct. Cl. 1948).

In this case, however, Plaintiff has not provided the court with any evidence that a challenged conviction has been reversed on grounds of innocence by a court of competent jurisdiction or by presidential pardon. Accordingly, this claim is dismissed.

4. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Claims Arising Under 42 U.S.C. § 1983.

Likewise, Section 1983 jurisdiction is conferred exclusively on United States District Courts. *See* 42 U.S.C. § 1343(a) (“The *district courts* shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . (4) To recover damages or to secure equitable or other relief under any act of Congress providing for the protection of civil rights[.]”) (emphasis

² Although Sections 1346(c)-(g) define additional jurisdiction of the United States District Courts, this jurisdiction is not relevant to the jurisdiction of the United States Court of Federal Claims.

added). *See Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005). Accordingly, Section 1983 does not authorize the United States Court of Federal Claims to adjudicate claims arising thereunder and this claim is dismissed.

5. The United States Court Of Federal Claims Does Not Have Authority To Appoint A Special Master.

RCFC 53 provides that the chief judge, at the request of the undersigned judge, may appoint a master to hold trial proceedings on issues to be decided by the undersigned judge if appointment is warranted by either “some exceptional condition” or the need to “resolve a difficult computation of damages.” *See* RCFC 53. In this case, the court does not have jurisdiction over Plaintiff’s claims, therefore the undersigned judge has no authority to hold trial proceedings or request the appointment of a master to do so.

6. The United States Court Of Federal Claims Does Not Have Authority To Appoint Counsel For Plaintiff.

Section 1915(a)(1) provides that: “Any court of the United States may authorize commencement . . . of any suit . . . without prepayment of fees . . . by a person who is unable to pay such fees.” 28 U.S.C. § 1915(a)(1). Accordingly, the court *may request counsel* for plaintiffs or defendants proceeding *in forma pauperis*. *See* 28 U.S.C. § 1915(e)(1) (“The court *may request an attorney* to represent any person unable to afford counsel.”) (emphasis added). The United States Court of Federal Claims, however, does not have the authority *to appoint* counsel for the plaintiff in this case. *See Bauer v. United States*, 40 Fed. Cl. 469, 470 ([The Court of Federal Claims] has the authority . . . only to *request* representation for litigants before the court[.])). Therefore, the court declines to exercise this discretionary authority in this case, because of the jurisdictional deficiencies in the Complaint.

7. Transfer To The United States District Court For The Eastern District Of North Carolina Is Required Under 28 U.S.C. § 1631.

When a civil action is filed and the court determines that “there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed[.]” 28 U.S.C. § 1631; *see also Telecomm Tech Servs., Inc. v. Siemens Rolm Commc’ns, Inc.*, 295 F.3d 1249, 1252 (Fed. Cir. 2002). The action should be transferred to another federal court when: “(1) the transferor court lacks . . . jurisdiction; (2) at [the] time the case was filed, it could have been brought in the transferee court; and (3) such transfer is in the interests of justice.” *Gray v. United States*, 69 Fed. Cl. 95, 98 (2005); *see also Tarrant v. United States*, 71 Fed. Cl. 554, 558 (2006).

The court is satisfied that the conditions for transfer have been met in this case. Although the United States Court of Federal Claims does not have jurisdiction to adjudicate claims asserted in the March 13, 2006 Complaint, a civil action may have been filed in the United States District

Court for the Eastern District of North Carolina, the venue wherein Plaintiff resides.³ It also appears that in light of Plaintiff's status as a *pro se* litigant and as a United States Veteran, transferring this claim to the proper forum, where Plaintiff appears to be represented by counsel, serves the interests of justice.⁴

III. CONCLUSION.

For the aforementioned reasons, the Government's Motion to Dismiss is granted and all pleadings filed in Case No. 06-196 in the United States Court of Federal Claims are transferred to the United States District Court for the Eastern District of North Carolina.

In addition, since this case and others filed in the United States Court of Federal Claims (Case No. 04-00837 and Case No. 06-00433) evidence that Plaintiff may not have been cognizant of the limited jurisdiction of the United States Court of Federal Claims, the Clerk of the Court is hereby ordered to forward any future actions from Plaintiff to the Clerk of the United States District Court for the Eastern District of North Carolina for appropriate disposition.

IT IS SO ORDERED.

SUSAN G. BRADEN
Judge

³ It appears that several civil actions are currently pending in the United States District Court for the Eastern District of North Carolina, wherein the claims alleged in this case properly may be addressed. See <https://pacer.uspci.uscourts.gov/cgi-bin/dquery.pl>. (last visited Jan. 18, 2007).

⁴ Plaintiff's April 19, 2006 Statement indicates that a Public Defender named "Dubois" has been appointed to represent Plaintiff's interests in the United States District Court for the Eastern District of North Carolina.